

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Case No: 24-5461-JSR

**ARTIST PUBLISHING GROUP, LLC dba
APG, a Delaware Limited Liability Company;
FIRST-N-GOLD PUBLISHING, INC., a
Florida Corporation; LUKASZ GOTTWALD
an individual doing business as KASZ MONEY
PUBLISHING; KMA ASSETS I LP, a
Delaware Limited Partnership; KMA ASSETS
II LIMITED, a United Kingdom Private
Limited Company; KOBALT MUSIC
PUBLISHING AMERICA, INC. dba KMPA, a
Delaware Corporation; MXM MUSIC AB dba
MXM, a Swedish Limited Liability Company;
NOTTING HILL MUSIC, INC., a New York
Corporation; and PRESCRIPTION SONGS,
LLC, a California Limited Liability Company,**

Plaintiffs,

vs.

**ORLANDO MAGIC, LTD. dba ORLANDO
MAGIC, a Florida Limited Partnership; and
DOES 1-10, inclusive,**

Defendants.

**PLAINTIFFS' RESPONSE TO
DEFENDANT'S STATEMENT OF
MATERIAL FACTS AND
PLAINTIFFS' STATEMENT OF
ADDITIONAL MATERIAL
FACTS**

PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF MATERIAL

FACTS

Pursuant to Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, Plaintiffs Artist Publishing Group, LLC, First-N-Gold Publishing, Inc., Lukasz Gottwald dba Kazs Money Publishing, KMA Assets I LP, KMA Assets II Limited, Kobalt Music Publishing America, Inc. dba KMPA, MXM Music AB dna MXM, Notting Hill Music, Inc., and Prescription Songs, LLC (collectively "Plaintiffs") respectfully submit this response to Defendant Orlando Magic, Ltd. dba Orlando Magic's ("Orlando" or "Defendant") Statement of Material Facts as follows:

1. Kobalt is the administrator for certain of Plaintiffs' copyright interests, including all of the Subject Songs. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed.

2. As the administrator of Plaintiffs' copyright interests, Kobalt [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Response:

Undisputed.

3. Through the Administration Agreements, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed that Kobalt [REDACTED] Disputed to the extent
[REDACTED]
[REDACTED]

4. Kobalt also has the right [REDACTED]
[REDACTED]

Response:

Undisputed.

5. Although Kobalt administers Plaintiffs' copyright interests, Plaintiffs [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Response:

Undisputed that Plaintiffs [REDACTED]

Disputed as to [REDACTED]

[REDACTED] Undisputed that the quoted language exists [REDACTED]

6. TuneSat is a company that uses [REDACTED]
[REDACTED]
[REDACTED].

Response:

Undisputed.

7. In 2019, TuneSat [REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed.

8. TuneSat uses [REDACTED]
[REDACTED]

Response:

Undisputed that TuneSat uses [REDACTED] Disputed in
that [REDACTED]

[REDACTED]

TuneSat [REDACTED]

[REDACTED]

[REDACTED]

9. TuneSat also [REDACTED]

[REDACTED]

[REDACTED]

Response:

Undisputed, [REDACTED]

[REDACTED]

10. TuneSat also [REDACTED]

[REDACTED]

[REDACTED]

Response:

Undisputed that TuneSat [REDACTED]

[REDACTED] Disputed as to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. Typically, [REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed.

12. [REDACTED]
[REDACTED]
[REDACTED]

Response:

Disputed as to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13. However, TuneSat does not [REDACTED]
[REDACTED] TuneSat [REDACTED]
[REDACTED]

Response:

Undisputed that “TuneSat [REDACTED]
[REDACTED] and that TuneSat [REDACTED] Disputed as

to [REDACTED]
[REDACTED]
[REDACTED]

14. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed.

15. [REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed.

16. Once TuneSat [REDACTED]
[REDACTED]

Response:

Undisputed that TuneSat [REDACTED]
[REDACTED]
[REDACTED] Disputed as to [REDACTED]
[REDACTED]

17. TuneSat then [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Response:

Undisputed.

18. TuneSat [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Response:

Undisputed.

19. [REDACTED]

[REDACTED]

Response:

Undisputed.

20. [REDACTED]

Response:

Disputed to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21. At some point, [REDACTED]

[REDACTED] TuneSat then [REDACTED]
[REDACTED]

Response:

Disputed. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22. On June 18, 2019, [REDACTED] Marc Littman contacted Kobalt on behalf of TuneSat regarding potential or actual internet searches by TuneSat regarding the songs at issue in the Complaint. Ex. 14, Kobalt Suppl. Resps. to Interrogs at 5.

Response:

Undisputed that on June 18, 2019, [REDACTED] Marc Littman contacted Kobalt on behalf of TuneSat. Disputed as to any implication that this contact specifically referred to the

songs at issue in the Complaint, or provided notice of any of the uses at issue in this case. The contact was limited to offering TuneSat's services as to Kobalt's entire catalogue, in which the songs at issue were a necessary subset without being directly referenced. *See Declaration of Rob Christensen Opposing Defendant's Motion for Summary Judgment* ("Christensen Decl.") ¶ 4; Defendant's Ex. 14, Kobalt Suppl. Resps. to Interrogs no. 3, at p. 6.

23. In its supplemental response to Interrogatory 3, Kobalt claimed privilege over information other than the contact from Mr. Littman described above. *Id.*

Response:

Disputed. Plaintiffs' Supplemental Response to Interrogatory No. 3 speaks for itself. Plaintiffs responded fully to Defendant's Interrogatory, and no such other information was necessary. *See* Defendant's Ex. 14, Kobalt Suppl. Resps. to Interrogs no. 3, at p. 6.

24. [REDACTED] Kobalt entered into an agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Response:

Undisputed that the language in the contract provides that [REDACTED]

[REDACTED]

[REDACTED]

Disputed that [REDACTED]

[REDACTED]

Further disputed as to

25.

Response:

26.

Response:

The image consists of a series of horizontal black bars of varying lengths, arranged vertically. The bars are solid black and have thin white borders. They are positioned against a white background. The lengths of the bars decrease from top to bottom, creating a visual effect of descending steps or a staircase.

27. Kobalt, in its [REDACTED]
[REDACTED]
[REDACTED]

Response:

Disputed that Kobalt, in its [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

28. Kobalt gave

Response:

Undisputed that [REDACTED] Disputed as to [REDACTED]

29. Although their agreement stated

Under the agreement, Kobalt

Response:

Undisputed that the agreement

Disputed that Kobalt

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

30. Kobalt agreed that [REDACTED]
[REDACTED]

Response:

Undisputed.

31. Two months after [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed.

32. Kobalt authorized [REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed.

33. On March 8, 2021, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed that [REDACTED]
[REDACTED] Disputed to [REDACTED]
[REDACTED]

34. [REDACTED] all of the Subject Songs were in its music catalog.
[REDACTED]
[REDACTED]

Response:

Undisputed that the Subject Songs were in its catalog [REDACTED]
[REDACTED] Disputed as to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

35. With that information in hand, [REDACTED]
[REDACTED] By

October 31, 2020, [REDACTED]
[REDACTED]

Response:

Undisputed that [REDACTED]

[REDACTED] Disputed as to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

36. On January 19, 2021, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Response:

Undisputed that [REDACTED]

Disputed as to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

37. During discovery in this action, TuneSat produced [REDACTED]

[REDACTED] When shown these [REDACTED] during a

deposition in this matter, TuneSat Chief Operating Officer, Chris Woods, testified that [REDACTED]

[REDACTED]

[REDACTED]

Response:

Undisputed.

38. By July 13, 2021, [REDACTED] Also by July 13, 2021, [REDACTED]

[REDACTED]

Response:

Undisputed that TuneSat [REDACTED]

[REDACTED]

[REDACTED]

Further undisputed that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disputed that [REDACTED]

39.

[REDACTED]

[REDACTED]

Response:

[REDACTED]

40. [REDACTED]

[REDACTED]

Response:

[REDACTED]

41. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Response:

[REDACTED]

PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS

42. Plaintiffs are music publishers and administrators who control an extensive catalog of musical compositions. [REDACTED]

43. Of that catalog, 27 distinct compositions (the “Subject Works”) are at issue in this dispute. [REDACTED]

44. Defendant owns and operates the National Basketball Association team, the Orlando Magic. [REDACTED]

45. Plaintiffs allege Defendant exploited the Subject Works without regard for Plaintiffs’ rights in 35 videos posted online and on social media (the “Infringing Uses”). [REDACTED]

46. In 2020, Kobalt [REDACTED]

47. Also, in 2020, Kobalt [REDACTED]

[REDACTED]

48. [REDACTED]

[REDACTED]

49. On May 8, 2020, Kobalt [REDACTED]

[REDACTED]

[REDACTED]

50. TuneSat is an independent audio monitoring service and data provider. [REDACTED]

[REDACTED]

51. TuneSat's [REDACTED]

[REDACTED]

52. It [REDACTED]

[REDACTED]

53. TuneSat does not [REDACTED]

54. TuneSat merely [REDACTED]

[REDACTED]

55. TuneSat's [REDACTED]

[REDACTED]

56. It then [REDACTED]

[REDACTED]

57. TuneSat engages in [REDACTED]

[REDACTED]

58. TuneSat's [REDACTED]

[REDACTED]

59. TuneSat likewise cannot [REDACTED]
[REDACTED]

60. Only by [REDACTED]
[REDACTED]

61. The [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

62. Kobalt did not [REDACTED]
[REDACTED]

63. Kobalt did not [REDACTED]
[REDACTED]

64. Kobalt has never [REDACTED]
[REDACTED]
[REDACTED]

65. [REDACTED] TuneSat's services are [REDACTED]
[REDACTED]

66. Indeed, TuneSat never [REDACTED]
[REDACTED]

67. TuneSat never [REDACTED]
[REDACTED]

68. TuneSat likewise never [REDACTED]
[REDACTED]

69. TuneSat has never [REDACTED]
[REDACTED]

70. Similarly, TuneSat has never [REDACTED]
[REDACTED]

71. Generally, TuneSat is [REDACTED]
[REDACTED]

72. [REDACTED]
[REDACTED]
[REDACTED]

73. [REDACTED]
[REDACTED]
[REDACTED]

74. TuneSat is [REDACTED]
[REDACTED]

75. TuneSat has never [REDACTED]

76. TuneSat's [REDACTED]
[REDACTED]

77. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

78. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

79. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

80. [REDACTED]

[REDACTED]

81. TuneSat's [REDACTED]

[REDACTED]

82. Kobalt then [REDACTED]

[REDACTED]

83. TuneSat has no [REDACTED]
[REDACTED]
[REDACTED]

84. Kobalt never [REDACTED]
[REDACTED]

85. On or around July 13, 2020, Kobalt [REDACTED]
[REDACTED]
[REDACTED]

86. [REDACTED]
[REDACTED]
[REDACTED]

87. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

88. TuneSat's role [REDACTED]
[REDACTED]
[REDACTED]

89. [REDACTED]
[REDACTED]

90. [REDACTED]
[REDACTED]
[REDACTED]

91. [REDACTED]

92. [REDACTED]

93. Likewise, TuneSat has no [REDACTED]

94. Once TuneSat began [REDACTED]

95. [REDACTED]

96. [REDACTED]

97. [REDACTED]

98. [REDACTED]

99. [REDACTED]

100. [REDACTED]

[REDACTED]

101. [REDACTED]

[REDACTED]

102. Plaintiffs filed this litigation on July 19, 2024, [REDACTED]

[REDACTED]

103. Plaintiffs [REDACTED]

[REDACTED]

104. [REDACTED]

[REDACTED]

105. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

106. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

107. [REDACTED]

[REDACTED]

108. [REDACTED]

[REDACTED]

109. [REDACTED]
[REDACTED]

110. [REDACTED]
[REDACTED]

111. [REDACTED]
[REDACTED]
[REDACTED]

112. Later, [REDACTED]
[REDACTED]

113. [REDACTED]
[REDACTED]
[REDACTED]

114. Kobalt was never [REDACTED]
[REDACTED]

115. [REDACTED]
[REDACTED]
[REDACTED]

116. In the period from January 1, 2021 through July 18, 2021, [REDACTED]
[REDACTED]
[REDACTED]

117. [REDACTED]
[REDACTED]

118. [REDACTED]

[REDACTED]

119. [REDACTED]

[REDACTED]

[REDACTED]

120. [REDACTED]

[REDACTED]

[REDACTED]

121. [REDACTED]

[REDACTED]

[REDACTED]

122. [REDACTED]

[REDACTED]

123. [REDACTED]

[REDACTED]

[REDACTED]

124. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

125. [REDACTED]

[REDACTED]

126. [REDACTED]

[REDACTED]

127. [REDACTED]

[REDACTED]

[REDACTED]

128. [REDACTED]

[REDACTED]

129. [REDACTED]

[REDACTED]

130. [REDACTED]

[REDACTED]

[REDACTED]

131. [REDACTED]

[REDACTED]

[REDACTED]

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DATED: February 28, 2025

By /s/ Douglas Johnson

Douglas Johnson

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